

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

**Anthony Isaac Martinez And Houda
Martinez**

Case No. 09-81608
Chapter 13

Social Security No. xxx-xx-9455 and xxx-xx-0752
Address: 107 Stockdale Court, Raeford, NC 28376

Debtors

OBJECTION TO CLAIM

NOW COME the Debtors above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully object to the proof of claim filed by the creditor WELLS FARGO BANK, N.A. and dated October 7, 2009, for the following reasons:

The Debtors believe the “pre-petition” arrearage claim in the amount of \$2,833.91 is overstated. The Debtors believe the correct amount is \$0.00.

Additionally, even if the Debtors do have an arrearage, the Proof of Claim requests a \$300.00 attorney fee for “bankruptcy post-petition, pre-confirmation legal fees and expenses.” The Proof of claim does not in contravention of *In re Bartch* and *In re Obie* contain either proof that the Note was accelerated or that Wells Fargo Bank, N.A. has provided the Debtors with a notification of the assessment of this fee pursuant to N.C.G.S. § 45-91.

Because the Debtors contest the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtors are, by separate document attached herewith, requesting production from said creditor of a payment history and related information.

WHEREFORE, the Debtors pray that the Court enter an Order reducing the pre-petition arrearage claim to the sum of \$0.00 . Alternatively, the Debtors request that the attorneys fees be disallowed. Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtors request that, until such time as the aforementioned payment history is provided, the Court treat any hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a).

Dated: December 22, 2009

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
N.C. State Bar No. 23003
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750

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CERTIFICATE OF SERVICE

I, Ed Boltz, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on December 23, 2009. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

WELLS FARGO BANK, N.A.

Attn: Managing Agent

3476 Stateview Blvd.

Fort Mill, SC 29715-

Sean M. Corcoran

Attorney for WELLS FARGO BANK, N.A.

5121 Parkway Plaza Boulevard, Suite 300

Charlotte, NC 28217-

U.S. Bankruptcy Administrator

Richard M. Hutson, II

Chapter 13 Trustee

/s Renee Nolte

Renee Nolte